

MENDOCINO COUNTY AIR QUALITY MANAGEMENT DISTRICT

CHAPTER V - ENFORCEMENT AND PENALTY ACTIONS

RULE 1-500 - ENFORCEMENT

No person shall violate any condition of an Authority to Construct, any condition of a Permit to Operate, any provision of these rules and regulations; or any order, rule, or regulation of the California Air Resources Board; or any provisions of the California Health and Safety Code. Any person violating this rule is guilty of a misdemeanor and shall be subject to a fine not exceeding one thousand dollars (\$1,000), or imprisonment in the county jail for a period not exceeding six months, or both. Every day during any portion of which the violation occurs constitutes a separate offense. (Health and Safety Code, Section 42400)

RULE 1-510 - ORDERS FOR ABATEMENT

- (a) The Mendocino County Air Quality Management District Board or the Mendocino County Air Quality Management District Hearing Board may, after public notice and a public hearing, issue an Order for Abatement whenever it finds that any person is in violation of Section 41700 or 41701 of the California Health and Safety Code, or of any order, rule or regulation prohibiting or limiting the discharge of air contaminants into the air. In holding such a hearing, the Air Quality Management District Board shall be vested with all the powers and duties of the Hearing Board. (Health and Safety Code, Sections 42450 & 42451)
- (b) The Order for Abatement shall be framed in the manner of a writ of injunction requiring the respondent to refrain from a particular act. The order may be conditional and require a respondent to refrain from a particular act unless certain conditions are met. The order shall not have the effect of permitting a variance unless all the conditions for a variance, including limitation of time, are met. (Health and Safety Code, Section 42452)

RULE 1-520 - CIVIL PENALTIES

- (a) Except as otherwise provided in Rule 1-520(b), (c), (d), (e), (f), (g), (h), (i), (j) and (k), any person who violates any order, permit, rule or regulation of the District or of the District's Hearing Board, including any Airborne Toxic Control Measure adopted as part of Regulation 3 of the Air Quality Management District, shall be strictly liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day in which such violation occurs. (Health and Safety Code, Sections 39674, 42402)

[Adopted September 8, 1992; Amended April 6, 1993]

- (b) Except as otherwise provided in Rule 1-520(a), (c), (d), (e), (f), (g), (h), (i), (j) and (k), any person who violates any order, permit, rule or regulation of the District or of the District's Hearing Board, including any Airborne Toxic Control Measure adopted as part of Regulation 3 of the Air Quality Management District, shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which such violation occurs. (Health and Safety Code, Sections 39674, 42402)

[Adopted September 8, 1992; Amended, Renumbered April 6, 1993]

- (c) Any person who negligently emits an air contaminant in violation of any rule, regulation or order of the state board or of the District pertaining to emission regulations or limitations, including any Airborne Toxic Control Measure adopted as part of Regulation 3 of the Air Quality Management District, shall be liable for a civil penalty of not more than fifteen thousand dollars (\$15,000) for each day in which such violation occurs, (Health and Safety Code, Sections 39674, 42402.1).

[Adopted September 8, 1992; Amended, Renumbered April 6, 1993]

- (d) Any person who owns or operates any source of air contaminants in violation of Health and Safety Code, Section 41700 which causes actual injury to the health or safety of a considerable number of persons of the public is liable for a civil penalty of fifteen thousand dollars (\$15,000). Each day in which a violation occurs is a separate offense, (Health and Safety Code, Section 42402.1).

[Adopted April 6, 1993]

- (e) Any person who emits an air contaminant in violation of any order, rule, or regulation of the state board or of the District pertaining to emissions regulations or limitations, including any Airborne Toxic Control Measure adopted as part of Regulation 3 of the Air Quality Management District, and who knew of the emissions and failed to take corrective action within a reasonable period of time, shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day in which such violation occurs, (Health and Safety Code, Sections 39675, 42402.2).

[Adopted September 8, 1992; Amended, Renumbered April 6, 1993]

- (f) Any person who owns or operates any source of air contaminants in violation of Health and Safety Code, Section 41700 which causes actual injury to the health or safety of a considerable number of persons of the public, and who knew of the emissions and failed to take corrective action, is liable for a civil penalty of twenty-five thousand dollars (\$25,000). Each day in which a violation occurs is a separate offense, (Health and Safety Code, Section 42402.2).

[Adopted April 6, 1993]

- (g) Any person who intentionally or negligently violates any Order for Abatement issued by the Air Quality Management District Board or Air Quality Management District Hearing Board pursuant to Health and Safety Code, Sections 42450 - 42454 or Rule 1-510(a), or by the state board shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day in which such violation occurs, (Health and Safety Code, Section 42401).

[Adopted September 8, 1992; Renumbered April 6, 1993]

- (h) Any person who willfully and intentionally emits an air contaminant in violation of any order, rule, or regulation of the District or of the state board, pertaining to emission limitations is liable for a civil penalty of not more than fifty thousand dollars (\$50,000), (Health and Safety Code, Section 42402.3).

[Adopted April 6, 1993]

- (i) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to the provisions of Division 26 of the Health and Safety Code, or any rule, regulation, or order of the District, shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each day in which such violation occurs or the information remains uncorrected, (Health and Safety Code, Section 42402.2).

[Adopted September 8, 1992; Renumbered April 6, 1993]

- (j) Any person who fails to submit any information, reports, or statements required by the Air Toxics "Hot Spots" Information and Assessment Act of 1987 ("the Act" -- Health and Safety Code, Sections 44300 - 44384), or who otherwise fails to comply with any requirement of the Act or with any permit, rule, regulation or other requirement issued or adopted pursuant to the Act, is subject to a civil penalty of not less than five hundred dollars (\$500.00) or more than ten thousand dollars (\$10,000.00) for each day that the information, report, or statement is not submitted, or that the violation continues, (Health and Safety Code, Section 44381(a)).

[Adopted September 8, 1992; Renumbered April 6, 1993]

- (k) Any person who knowingly submits any false statement or representation in any application, report, statement, or other document filed, maintained or used for the purposes of compliance with the Air Toxics "Hot Spots" Information and Assessment Act of 1987 is subject to a civil penalty of not less than one thousand dollars (\$1,000.00) or more than twenty-five thousand dollars (\$25,000.00) for each day that the information remains uncorrected, (Health and Safety Code Section 44381(b)).

[Adopted September 8, 1992; Renumbered April 6, 1993]

- (l) The civil penalties prescribed in Rule 1-520 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) shall be assessed and recovered as provided in Health and Safety Code, Section 42403. Alternatively, the Air Pollution Control Officer is authorized to enter into a voluntary settlement in accordance with the District's Violation Settlement Guidelines, (Health and Safety Code, Section 42403).

[Adopted September 8, 1992; Amended, Renumbered April 6, 1993]

RULE 1-530 - NOTICE TO COMPLY

(a) Purpose

The purpose of this rule is to implement the provisions of Chapter 3 of Part 1 of Division 26 of the California Health and Safety Code (commencing with Section 39150), which define a minor violation and establish criteria for issuing a Notice to Comply.

(b) Applicability

This rule applies to any person, owner, operator, or representative of a facility subject to state requirements, district rules or regulations, administrative or procedural plan/policy or permit conditions, or requests for information or records by a district.

(c) **Definitions**

- (1) **Chronic Violation** means a violation that reflects a pattern of neglect or disregard that results in the same or similar violation at the same source or facility or same piece of equipment.
- (2) **Information** means data, records, photographs, maintenance records, analyses, plans, or specifications which will disclose the nature, extent, quantity, or degree air contaminants which are, or may be, discharged by a source of air contaminants for which a permit was issued or applied or which is subject to state or federal requirements, district rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by a district.
- (3) **Minor Violation** means the failure of any person to comply with an administrative or procedural requirement of applicable state air pollution law or regulation, district rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by the District which meets the following criteria:
 - (A) It does not result in an increase of emissions of air contaminants that exceeds regulatory or permit conditions;
 - (B) It does not endanger the health, safety, or welfare of any person or persons;
 - (C) It does not endanger the environment;
 - (D) It does not cause or contribute to the violation of any State or National Ambient Air Quality Standard;
 - (E) It does not preclude or hinder the District's ability to determine compliance with other applicable state or federal requirement; District rules and regulations, administrative or procedural plan or permit conditions, or requests for information or records.
- (4) **Notice to Comply** means a written method of alleging a minor violation that meets the requirements of Health and Safety Code, Section 39151.
- (5) **Procedural Requirement** means a provision of a rule or regulation that establishes a manner, method, or course of action, but does not specify, limit, or otherwise address direct air contaminant emissions.
- (6) **Recalcitrant Violator** means a person or facility where there is evidence indicating that the person or facility has engaged in a pattern of neglect or disregard with respect to the requirements of District rules and regulations, permit conditions or other applicable provisions of state or federal law or regulations.

(d) Requirements

- (1)** Except as otherwise provided in paragraph (d), a Notice to Comply shall be the only means by which the Air Pollution Control Officer shall cite a minor violation. The Air Pollution Control Officer shall not take any other enforcement action specified in this division to enforce the minor violation against a person or facility that has received a Notice to Comply if the person or facility is in compliance with this section.
- (2)** Any person or facility that receives a Notice to Comply pursuant to the subparagraph shall have the period specified in the Notice to Comply in which to achieve compliance with the requirement cited on the Notice to Comply. Within five (5) working days of achieving compliance, the person or facility representative who received the Notice to Comply shall sign and return it to the Air Pollution Control Officer, stating that the person or facility has complied with the Notice to Comply. The return shall also include a written statement describing when and how compliance was achieved. Failure to respond or a false statement describing when and how compliance was achieved is a violation subject to further legal action pursuant to the Health and Safety Code, Section 42400 et seq.
- (3)** A single Notice to Comply shall be issued for all minor violations cited during the same inspection and the Notice to Comply shall separately list each cited minor violation and the manner in which each minor violation may be brought into compliance.
- (4)** A Notice to Comply shall not be issued for any minor violation that is corrected immediately in the presence of the inspector. Immediate compliance in that manner may be noted in the inspection report or other District documents, but the person or facility shall not be subject to any further action by the District's representative or an authorized or designated officer. Corrected minor violations may be used to show a pattern of disregard or neglect by a recalcitrant violator.

(e) Testing

- (1)** If testing is required by the state board or the District, or an authorized or designated officer, to determine compliance, and the testing cannot be conducted during the course of the inspection, the Air Pollution Control Officer shall provide for a reasonable period of time to conduct the required testing.
- (2)** If, after the test results are available, the Air Pollution Control Officer determines that the issuance of a Notice to Comply is warranted, the Air Pollution Control Officer shall immediately notify the person or facility owner or operator in writing. If off-site testing is required pursuant to subdivision (d)(5)(A), a copy of the Notice to Comply may be notified to the person or owner or operator of the facility.

- (3) Notwithstanding any other provision of this rule, if a person or facility fails to comply with a Notice to Comply within the prescribed period, or if the Air Pollution Control Officer determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to the public health or safety or to the environment, the Air Pollution Control Officer may take any needed enforcement action authorized by law.
- (4) Nothing in this rule shall be construed as prohibiting the re-inspection of a site or facility to ensure compliance or to ensure that minor violations cited in a Notice to Comply have been corrected.
- (5) Nothing in this rule shall be construed as prohibiting the Air Pollution Control Officer, on a case-by-case basis, from requiring a person or facility subject to a Notice to Comply to submit reasonable and necessary information to support a claim of compliance by the person or facility.
- (6) The issuance of a Notice to Comply for a violation of state law will not interfere with an agency's ability to enforce all federal requirements or laws.
- (7) Notwithstanding any other provisions of paragraph (d), if the Air Pollution Control Officer determines that the circumstances surrounding a particular minor violation are such that the assessment of a penalty pursuant to this rule is warranted or required by federal law, in addition to issuance of a Notice to Comply, the District shall assess a penalty in accordance with Division 26 of the Health and Safety Code, Section 42400, et seq., if the Air Pollution Control Officer makes written findings that set forth the basis for the determination of the District.

(f) Exclusions

Notwithstanding paragraph (c)(3), above, no violation of any applicable state or federal requirement, District rule or regulation, administrative or procedural plan or permit condition or request for information or records shall be considered a minor violation if any of the following conditions apply:

- (1) The violation involves failure to comply with the emission standards in the applicable rule or regulation, including requirements for control equipment, emissions rates, concentration limits, product material limitations, and other provisions directly associated with emissions; or
- (2) The violation is knowing, willful, or intentional; or
- (3) The violation enables the violator to benefit economically from noncompliance, either by realizing reduced cost or by gaining a competitive advantage; or
- (4) The violation is chronic; or
- (5) The violation is committed by a recalcitrant violator; or
- (6) The violation results in a nuisance; or

- (7) The violation is a violation of an order of abatement issued by the Hearing Board of the District.

(g) Appeals

Any person who is issued a Notice to Comply may appeal the issuance by filing a written appeal with the Air Pollution Control Officer within 10 working days of receipt of the Notice. The appeal shall state the grounds and basis for the appeal and include any evidence as to why the Notice to Comply should not have been issued. The Air Pollution Control Officer shall grant or deny the appeal within 30 days of receiving the appeal. The Air Pollution Control Officer's decision shall be final.

(h) Penalty for Failure to Comply

Any person or facility who fails to comply by the date specified on the Notice to Comply shall be subject to further enforcement action as provided in Health and Safety Code, Section 42400, et seq., or any other applicable law.

(i) Expiration

This rule shall remain in effect only until January 1, 2001, and as of that date is repealed unless a later enacted rule, which is enacted on or before January 1, 2001, deletes or extends that date, or unless Health and Safety Code, Sections 39150 - 39153 are extended beyond that date by an act of the Legislature which is signed into law by the Governor.

[Adopted December 1, 1998]

RULE 1-540 - EQUIPMENT BREAKDOWN

(a) Breakdown Conditions

For the purposes of this rule, a breakdown condition means an unforeseeable failure or malfunction of any air pollution control equipment or related operating equipment which causes a violation of any emissions limitation or restriction prescribed by these rules and regulations, or by State law, or similar failure of any required in-stack continuous monitoring equipment where such failure or malfunction:

- (1) is not the result of neglect or disregard of any air pollution control law or rule or regulation;
- (2) is not intentional or the result of negligence;
- (3) is not the result of improper maintenance;
- (4) does not constitute a nuisance;
- (4) is not an abnormally recurrent breakdown of the same equipment.

(b) Breakdown Procedures

- (1)** Any breakdown condition meeting the qualifications of Rule 1-540(a) shall constitute a violation of any applicable emission limitation or restriction prescribed by these rules and regulations; however, the Air Pollution Control Officer may elect to take no enforcement action if the owner or operator demonstrates to his satisfaction that a breakdown condition exists and the following requirements are met:
 - (A)** The breakdown is reported to the District office as soon as reasonably possible, but no later than one (1) hour after its detection during normal office hours (8:30 a.m. to 5:00 p.m.), or one (1) hour after the start of the next regular business day, whichever is sooner.
 - (B)** The owner or operator takes immediate steps to minimize the impact of the breakdown and come into compliance.
 - (C)** The breakdown does not interfere with the attainment or maintenance of any national ambient air quality standard.
- (2)** The breakdown shall be logged, investigated and handled to its final disposition in accordance with uniform District procedures.
- (3)** Upon receipt of notification of a breakdown condition, the Air Pollution Control Officer shall promptly investigate and determine whether the occurrence constitutes a breakdown condition. If it is not a breakdown condition, he may take appropriate enforcement action including, but not limited to, seeking fines, an abatement order, or an injunction against further operation.

(c) Reporting Requirements

Within ten (10) days after a breakdown occurrence has been corrected, the owner or operator shall submit a written report to the Air Pollution Control Officer including, but not limited to, the following details:

- (1)** Duration of excessive emissions.
- (2)** Estimate of quantity of emissions.
- (3)** Statement of the cause of the occurrence.
- (5)** Corrective measures to be taken to prevent recurrences.
- (6)** Documentation of the breakdown condition may be required by the Air Pollution Control Officer.

(d) Burden of Proof

The burden shall be on the owner or operator of the source to provide sufficient information to demonstrate that a breakdown did occur. If the owner or operator fails to provide sufficient information, the Air Pollution Control Officer shall undertake appropriate enforcement action.

(e) Failure to Comply with Reporting Requirements

Any failure to comply, or comply in a timely manner, with the reporting requirements established in Rule 1-540 (b)(1)(A) and (c)(1) through (c)(4) shall constitute a separate violation of this rule.

(f) False Claiming of Breakdown Occurrence

It shall constitute a separate violation of this rule for any person to file with the Air Pollution Control Officer a report that falsely, or without probable cause, claims that an occurrence is a breakdown occurrence.

(g) Extended Breakdown Provisions

For any occurrence which causes a breakdown condition meeting the requirements of Rule 1-540(a) and which may persist for longer than twenty-four (24) hours (ninety-six hours for monitoring equipment), the owner or operator may, in lieu of shutdown, obtain an emergency variance as provided in Rule 1-615.